

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal, and (2) is not binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte YOSHIAKI SUZUKI

Appeal No. 95-2600
Application 07/990,458¹

ON BRIEF

Before HAIRSTON, BARRETT, and FLEMING, Administrative Patent Judges.

BARRETT, Administrative Patent Judge.

DECISION ON APPEAL

¹ Application for patent filed December 15, 1992, entitled "Head Mounted Display Configured To A User's Physical Features," which claims the foreign priority benefit under 35 U.S.C. § 119 of Japanese Application 3-346364, filed December 27, 1991, Japanese Application 3-346365, filed December 27, 1991, Japanese Application 4-004440, filed January 14, 1992, and Japanese Application 4-008013, filed January 21, 1992.

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This is a decision on appeal under 35 U.S.C. § 134 from the examiner's refusal to allow claims 1-16, all of the claims pending in the application. We affirm-in-part.

The invention is directed to a goggle-type image display apparatus having a distance adjusting mechanism for adjusting the distance between the left and right optical blocks to bring them into alignment with the operator's eyes.

Claim 1 is reproduced below.

1. A goggle type image display apparatus wearable on a user's head for presenting a visible image thereon, comprising:

left and right optical blocks each having display means for representing an image thereon;

distance adjusting means connected to said left and right blocks for adjusting the distance between the left and right blocks;

a goggle-shaped housing for containing the left and right optical blocks;

a support frame mounted to said housing for supporting said left and right blocks and said distance adjusting means, wherein said support frame slidably supports the left and right optical blocks and said distance adjusting means is mounted on the support frame for sliding the left and right optical blocks along the support frame toward and away from each other within the housing.

The examiner relies on the following references:

Heilig	2,955,156	October 4, 1960
Gale	4,952,024	August 28, 1990
Hilton	5,187,503	February 16, 1993
		(filed February 4, 1991)

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Suwa et al. (Suwa) 0,438,362
(European Patent Application)

July 24, 1991²

Claims 1, 3, 4, and 14-16 stand rejected under 35 U.S.C. § 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. § 103 as being unpatentable over Suwa.

Claim 2 stands rejected under 35 U.S.C. § 103 as being unpatentable over Suwa and Gale.

Claims 5 and 6 stand rejected under 35 U.S.C. § 103 as being unpatentable over Suwa and Hilton.

Claims 7 and 9-13 stand rejected under 35 U.S.C. § 103 as being unpatentable over Suwa and Heilig.

Claim 8 stands rejected under 35 U.S.C. § 103 as being unpatentable over Suwa, Heilig, and Gale.

We refer to the Final Rejection (Paper No. 7), the Examiner's Answer (Paper No. 12), and the Supplemental Examiner's Answer (Paper No. 14) for a statement of the examiner's position and to the Brief (Paper No. 11) and the Reply Brief (Paper No. 13) for appellant's position.

OPINION

Grouping of claims

² Suwa corresponds to U.S. Patent 5,371,556, issued December 6, 1994, based on an effective filing date of January 15, 1991.

The main brief separately argues claims 1, 4, 8, 11, 12, 15, and 16. As to claims 2, 5, 6, 7, 9, appellant argues that the combinations of references do not teach the limitations of claim 1, which does not constitute an argument why these claims are separately patentable. Claims 3, 10, 13, and 14 are not argued. Accordingly, the claims that are separately argued are claims 1, 4, 8, 11, 12, 15, and 16. Claims dependent upon these claims stand or fall therewith. See 37 CFR § 1.192(c)(5)(1994) ("it will be presumed that the rejected claims stand or fall together unless a statement is included that the rejected claims do not stand or fall together, and in the appropriate part or parts of the argument under subparagraph (c)(6) appellant presents reasons as to why appellant considers the rejected claims to be separately patentable" (emphasis added)).

Reply Brief

In the main appeal brief, appellant did not argue the separate patentability of claims 2, 3, 5-7, 9, 10, 13, and 14. In the reply brief, appellant (through different counsel) now argues the merits of claim 2 (Reply to Section 9.3, Reply Brief, pages 5-6), claim 7 (Reply Brief, pages 13-14), claim 9 (Reply Brief, pages 7-9), claims 10 and 13 (Reply Brief, pages 10-12). These arguments presented for the first time in the reply brief

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are untimely and will not be considered. Cf. Kaufman Company, Inc. v. Lantech, Inc., 807 F.2d 970, 973 n.*, 1 USPQ2d 1202, 1204 n.* (Fed. Cir. 1986); McBride v. Merrell Dow and Pharmaceuticals, Inc., 800 F.2d 1208, 1210-11 (D.C. Cir. 1986) ("We generally will not entertain arguments omitted from an appellant's opening brief and raised initially in his reply brief. . . . Considering an argument advanced for the first time in a reply brief, then, is not only unfair to an appellee, . . . but also entails the risk of an improvident or ill-advised opinion on the legal issues tendered."). Appellant elected to have claims 2, 3, 5-7, 9, 10, and 14 stand or fall with claim 1 and to have claim 13 stand or fall with claim 12 by not presenting separate arguments thereto in the main brief. See 37 CFR § 1.192(c)(5). Appellant cannot allege a new argument as an excuse to argue claims which were not addressed in the first place and for which no argument by the examiner was necessary.

New arguments as to claims which were argued in the main brief are treated in the analysis.

Claims 1, 3, 4, and 14-16

Claims 1, 3, 4, and 14

Section 102(b)

"Anticipation is established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention." RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

Appellant argues that "Suwa does not have 'a support frame' and 'a goggle-shaped housing'" (Brief, page 12). Appellant argues that "[s]ince the attachments 22A and 22B [corresponding to the claimed optical blocks] are not contained within the frame 20, but rather are attached to the frame 20, Suwa's frame 20 is not the claimed goggle-shaped housing 'for containing the left and right optical blocks'" (Brief, page 12). Appellant argues that "Suwa does not teach an additional element, which is a 'support frame' mounted to the housing" (Brief, page 12).

In Suwa, "reference numeral 20 depicts a front frame to which main portions of the spectacle type retina direct display apparatus are secured" (col. 3, lines 35-37). "When the space adjusting dial 23 mounted on the frame 20 is rotated, racks 22C and 22D meshed with a gear 23A of the dial 23 are moved right and left, the space between the attachments 22A and 22B for eyeballs being thereby adjusted." Col. 4, lines 15-19. The attachments 22A and 22B in Suwa, which correspond to the claimed left and right optical blocks, are slidably mounted in the frame 20 to be

moved right and left. Thus, the front frame 20 in Suwa has structure corresponding the "support frame" of claim 1.

Appellant's "goggle-shaped housing" is disclosed as a "cover" (specification, page 5, line 10, and, for example, claim 7). Comparing figure 4, which shows the support frame 41 with hinges 56, 57, to figure 1, it is seen that the housing is a cover (or covers) over the movable optical blocks; e.g., claim 7 recites a main cover and right and left covers. Figures 1 and 5 show that the housing may consist of a front cover 59, a rear cover 60 (which may consist of an upper cover 61 and a lower cover 52), and side covers 6 and 7. The claims, at most, recite that the housing consists of "a main cover portion, and left and right side covers attached to the opposite sides of the main cover portion" (claims 7, 9, and 13). Claim 1 does not recite any structure of the housing, but only recites the function of "containing the left and right optical blocks" without defining what is meant by "containing." Suwa has a front frame 20 with a shield or visor that covers the front and side portions of the device and a top flat portion in figure 3 through which dial 23 protrudes (like the cover in appellant's figures 1 and 5). Suwa also has wide support frames (i.e., bows) 21A and 21B, which are part of the housing as evidenced by the "left and right side covers" in claims 7, 9, and 13. As shown by the dashed outline

of the goggles in figure 6, the front shield, top of frame 20, and frames 21A, 21B collectively enclose and form a housing around the attachments 22A and 22B. Thus, Suwa has structure corresponding to a "goggle-shaped housing for containing the left and right optical blocks," as claimed.

Appellant argues that: (1) "the devices for producing the images are mounted to the frame 20 and are not contained within any housing" (Brief, page 12); (2) "even if the frame 20 could be considered as both the claimed support frame and the housing, the frame 20 does not 'contain' left and right optical blocks and thus cannot be the claimed housing" (Brief, page 13); and (3) "Suwa simply does not perform the 'containing' function recited in applicant's claims" (footnote omitted) (Reply Brief, page 4). Appellant is reading some limitation into the term "containing" without explaining what it is or where the support for the term is in the specification. We agree with the examiner's position (Examiner's Answer, page 13) that blocks 22A and 22B are "contained" within the frame 20 because they are within the boundaries of the frame 20 and side frames 21A, 21B and are not visible when the device is worn as shown in figure 4 of Suwa. Even the more detailed claims to the housing (e.g., claims 7 and 9) do not recite that the housing completely encloses the optical blocks, so the fact that blocks may be

exposed in figure 3 does not mean they are not contained in the housing. It is noted, for example, that a dish can "contain" objects even though it is open at its top.

In our opinion, the language "a support frame mounted to said housing" in claim 1 does not require the frame to be a separate piece from the housing, but includes a frame which is part of the housing. That is, we read "mounted" as a structural limitation of the frame being attached to the housing, including being formed as one piece with the housing, not as a process limitation of the frame being connected as a step during the manufacture. In any case, however, the examiner points out that "element 20 has two different portions, i.e. the front shield portion in Fig. 4 and the flat portion in Fig. 3" (Examiner's Answer, page 5) and also finds the side elements 21A and 21B to be part of the housing (Examiner's Answer, page 4). The shield portion which covers the front and sides (up to the hinges) of frame 20 is a main cover and appears to be a separate piece from the frame as indicated by the line parallel to the front surface of the goggle in figures 3 and 4. The side frames 21A and 21B are clearly separate pieces because they are attached at the hinges. Therefore, it appears that Suwa does have a housing, consisting of the shield and side elements, separate from the frame in which the optical blocks are mounted.

For the reasons discussed above, we find claim 1 to be anticipated by Suwa. Claims 3 and 14 are not argued in the main brief. The rejection of claims 1, 3, and 14 is sustained.

The assembly of attachments 22A and 22B, distance adjusting racks 22C and 22D, and space adjusting dial 23 onto the frame 20 forms a "unit" as recited in claim 4. Appellant argues that "Suwa . . . has the attachments 22A and 22B separately mounted to the frame 20 and thus does not anticipate claim 4" (Brief, page 13). Since Suwa's attachments 22A and 22B are mounted to frame 20 in the same way as appellant's optical blocks 2 and 3, appellant's argument is not understood. Appellant argues that "Suwa does not teach the subject matter of claim 4 since Suwa provides no indication that the racks 22C and 22D and the gear 23A are mounted as a unit" (Brief, page 13). It is not clear from this bare statement why appellant does not consider the assembly to be a unit. In the Reply Brief, appellant argues that the pieces must be mounted on the support frame as a unit (Reply Brief, page 13). Since the optical blocks and distance adjusting means (including the distance adjusting dial 23) do not become a unit until assembled to the frame 41, as shown in appellant's figure 4, we fail to see any difference between appellant's assembly and Suwa's. The rejection of claim 4 is sustained.

The only possible reason we can see why claim 1 may not be anticipated is if the limitation of "a support frame mounted to said housing" requires the frame to be a separate piece from the housing. As discussed, Suwa has structure corresponding to the housing and to the support frame. It also has been discussed why Suwa appears to have a separate housing consisting of a shield and side support frames and, thus, anticipates a separate frame and housing. In addition, we agree with the examiner that it would have been obvious to make the housing separate from the frame, if this is not taught already. It would have been obvious to one of ordinary skill in the art to use a separate housing and frame to facilitate the assembly in the same way that automobile engines were assembled to frames before mounting the body or that television components are assembled to a chassis before being mounted in the case.

The examiner cites Nerwin v. Erlichman, 168 USPQ 177, 179 (Bd. of Int. 1969) for the proposition that the separating an integral structure into discrete elements would be obvious. This is like one of the negative rule of inventions that existed before the 1952 Patent Act. No per se rules of obviousness exist. However, in our opinion, making one piece as several pieces which are assembled together was common manufacturing knowledge within the level of ordinary skill in the art at the

time of the invention. The reason, suggestion, or motivation for modification may come from what is known to the person of ordinary skill or from a specific teaching in the reference. See In re Oetiker, 977 F.2d 1443, 1447-48, 24 USPQ2d 1443, 1446-47 (Fed. Cir. 1992) (Nies, C.J., concurring).

Appellant argues that Big Four Automotive Equipment Corp. v. Jordan, 184 USPQ 80 (N.D. Ohio 1974) stands for the proposition that a single element in a reference cannot be interpreted as two different elements where the two elements perform two different functions at the same time. The so-called rule about double inclusion of elements is complicated, but it is not relevant here. Different parts of the frame 20 in Suwa constitute separate frame and housing structure. The fact that Suwa uses a single reference numeral does not mean that the same element is being used to meet two separate limitations.

Claims 15 and 16

As to claim 15, we agree with appellant that Suwa does not disclose means for attaching the earphone "for rotation about a vertical axis." "Vertical" must be interpreted consistent with the specification and with the normal meaning of the term, to mean "upright" when the display apparatus is in its normal orientation. Therefore, we do not agree with the examiner that

vertical can be defined in an arbitrary direction. The earphone in figure 7 of Suwa is rotatable around an axis in the horizontal plane and does not anticipate claim 15. The examiner does not apply any backup obviousness reasoning to claim 15. We note that Heilig shows earphones that are apparently mounted for rotation about a vertical axis (see hinge attachment of earphones to rod 30 in figure 5); however, Heilig is not applied to the rejection of claims 15 and 16. The anticipation and obviousness rejections of claims 15 and 16 are reversed.

Claim 2

In his main brief, appellant does not argue the separate patentability of the features of claim 2 for which Gale is additionally cited. Instead, appellant argues that neither Gale nor the combination of Gale with Suwa teach the features of the "support frame" and the "goggle-shaped housing" in claim 1 (Brief, page 18). In effect, appellant argues that claim 2 should be patentable because claim 1 is patentable, i.e., that claim 2 stands or falls with claim 1. Since we sustain the rejection of claim 1, we will sustain the rejection of claim 2. Appellant's new arguments regarding claim 2 in the Reply Brief are untimely and will not be considered.

Claims 5 and 6

In his main brief, appellant does not argue the separate patentability of the features of claims 5 and 6 for which Hilton is additionally cited. Instead, appellant argues that neither Hilton nor the combination of Hilton with Suwa teaches the features of the "support frame" and the "goggle-shaped housing" in claim 1 (Brief, pages 18-19). In effect, appellant argues that claims 5 and 6 should be patentable because claim 1 is patentable, i.e., that claims 5 and 6 stand or fall together with claim 1. Since we sustain the rejection of claim 1, we will sustain the rejection of claims 5 and 6.

Claims 7 and 9-13

Claims 7 and 9

In his main brief, appellant does not argue the separate patentability of the features of claims 7 and 9 for which Heilig is additionally cited. Instead, appellant argues that neither Heilig nor the combination of Heilig with Suwa teaches the features of the "support frame" and the "goggle-shaped housing" in claim 1 (Brief, page 19). In effect, appellant argues that claims 7 and 9 should be patentable because claim 1 is patentable, i.e., that claims 7 and 9 stand or fall together with claim 1. Since we sustain the rejection of claim 1, we will sustain the rejection of claims 7 and 9. Appellant's new

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arguments regarding claim 7 and 9 in the Reply Brief are untimely and will not be considered.

Claim 10

Appellant did not argue claim 10 in the main brief. The examiner dropped the Gale reference from the statement of the rejection of claim 10 in the Examiner's Answer (page 2). Technically, this does not create a new ground of rejection. See In re Bush, 296 F.2d 491, 496, 131 USPQ 263, 266-67 (CCPA 1961) ("the answer specified a rejection on Whitney in view of Harth and if the board found it unnecessary to rely on Harth in sustaining that rejection, as it appears to have done, that does not amount to rejection on a new ground"). Appellant does not explain how he has been denied an opportunity to react to the rejection when he never sought to argue claim 10 in the main brief. See In re Kronig, 539 F.2d 1300, 1302, 190 USPQ 425, 426 (CCPA 1976) (the "ultimate criterion" of whether a rejection is new is "whether appellants have had a fair opportunity to react to the thrust of the rejection"). Accordingly, we treat claim 10 as falling with claim 9 because it was not argued in the main brief. The rejection of claim 10 is sustained.

Claim 11

Appellant argues that none of the references discloses a pair of elastic band portions and a pair of non-elastic band portions as recited in claim 11 (Brief, pages 21-22). The examiner states (Examiner's Answer, page 11):

Using various types and configurations of such well known headbands constitutes an obvious choice in engineering design and not inventive skill. Furthermore, Heilig discloses a headband which uses rotatable elastic bands (16) and non-elastic bands (17) (col.2, ln.18-20).

We note that the band 15 of cloth material in Heilig is more analogous to the claimed non-elastic band portions than bands 17 because it attaches to the elastic bands at respective sides of the display apparatus, whereas bands 17 rotatably attach the elastic band portions to the sides of the casing 10. We agree with the examiner that many variations of head bands could be considered matters of design choice. "Design choice" has been used where the differences appear to be a matter of choice by the designer in doing something one way rather than another and solve no stated problem and do not result in a different function or give unexpected results. See In re Chu, 66 F.3d 292, 298-99, 36 USPQ2d 1089, 1094-95 (Fed. Cir. 1995). However, since the specific arrangement of non-elastic band portions rotatably attached to each other at one end requires some sort of rigid band and allows the band to be collapsed as shown in figure 12, we do not think the arrangement can be dismissed as providing no

different function or results. Therefore, we conclude that the examiner has failed to establish a prima facie case of obviousness with respect to claim 11. The rejection of claim 11 is reversed.

Claims 12 and 13

The same reasoning applied to claim 1 is generally applicable to claim 12. The "support frame" and "goggle-shaped housing" have already been discussed. Suwa manifestly must have structure corresponding to "mounting means" to hold the frame and housing together because it is shown as an assembly.

Appellant argues that claim 12 requires that each block have a light as recited in claim 2, whereas Suwa uses a single lamp (Reply Brief, page 9). This argument is new in the Reply Brief, but will be addressed since claim 12 was addressed in the main brief. Since the argument is new, appellant cannot complain that our response is new. Suwa discloses that "the light from the point-source of light can be effectively utilized by two optical systems so that the consumption of power can be reduced" (col. 4, lines 40-42). In our opinion, this would have reasonably suggested to the artisan that a separate light source be used for each block if power was not a problem.

Claim 12 recites "a head band rotatably attached at opposite ends thereof to the housing, the head band being capable of folding over the housing." Appellant argues that "[t]he references do not suggest a head band which can be folded over the housing" (Brief, page 23) and "[s]ince the Examiner has failed to allege that the head band would have been obvious, the rejection of claims 12 and 13 should be reversed" (Brief, page 23). The examiner clearly relied on Heilig as making obvious the use of a head band (Final Rejection, pages 8-9). As shown in figures 2 and 3, Heilig has a band 15 of cloth material attached to two elastic side straps 16, which are attached to rigid side straps 17 by buckles 18. The straps 17 are rotatably attached to the housing as best shown at the right side of figure 5. Note that claim 12 requires only that the head band be attached to the housing and not to the side covers as recited in claim 13. The band of Heilig is flexible and is therefore capable of folding over the housing. None of the claims require the head band to be rigid as disclosed. For these reasons, we sustain the rejection of claim 12.

Appellant did not argue claim 13 in the main brief. The examiner dropped the Schoolman reference from the statement of the rejection of claim 13 in the Examiner's Answer (page 2). Technically, this does not create a new ground of rejection. See

Bush, 296 F.2d at 496, 131 USPQ at 266-67. Appellant does not explain how he has been denied an opportunity to react to the rejection when he never sought to argue claim 13 in the main brief. It is noted that Schoolman was only applied as an example of the use of headbands. We treat claim 13 as falling with claim 12 because it was not argued in the main brief. The rejection of claim 13 is sustained.

Claim 8

Claim 8 is directed to the embodiment of appellant's figure 8. Claim 8 depends on claim 7 which recites that an earphone 9 and bow 69 are attached to the side covers for sliding movement in a forward or rearward direction. Claim 8 further recites that the earphone is attached for rotation about an axis extending in the direction of sliding movement and comprising means for retaining the earphone rotated at a predetermined angle. The examiner concludes that "it would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the combination of Suwa and Heilig by mounting the earphones on bendable metal tubes which enable the earphones to rotate in any direction, including about an axis in the direction of earphone sliding movement, for the purpose of better accommodating the physical features of the user as taught

by Gale" (Examiner's Answer, page 12). Appellant argues that "the references provide no suggestion for an earphone which can both slide along an axis and also rotate about that axis" (Brief, page 20) or "any means for retaining the earphone at a predetermined angle" (Brief, page 21).

We reject the examiner's application of Gale to claim 8. Since the earphones in Gale are not mounted to the side pieces of the goggle, the earphone mounting in Gale has little applicability to the claimed subject matter and we fail to see how Gale would have suggested the subject matter of claim 8. The rejection of claim 8 is reversed.

In our opinion, however, claim 8 would have been obvious over Suwa and Heilig as applied to claim 7, without the addition of Gale and we therefore enter a new ground of rejection under 37 CFR § 1.192(b). Heilig states (col. 2, lines 45-51): "Each of these ear phones is adjustably supported by the casing 10, in this instance by a rod 30 hinged to the ear phones 27, for lateral adjustment, which rod is slidable in a socket 31 which carries a set screw 32 for holding the rod in proper position to bring its ear phone 27 to a point adjacent to the user's ear." The earphones can slide in a forward or rearward direction as the rod 30 moves in and out of the socket 31. Although the bow limitation of claim 7 is not argued, the relatively large

earphones in Heilig which fit over a user's ear act as a bow (i.e., as a curved sidepiece passing over the ear). Since the rod 30 is round it can pivot as well as slide in the socket 31 and so is attached "for rotation about an axis extending in said direction of sliding movement of the earphone," as recited in claim 8. The set screw 32 comprises "means for retaining the earphone rotated at a predetermined angle," as recited in claim 8. It would have been obvious to the artisan to substitute the earphone mount of Heilig for the earphone mount in Suwa because it is a known alternative way to mount an earphone.

CONCLUSION

The rejections of claims 1-7, 9, 10, and 12-14 are sustained.

The rejections of claims 8, 11, 15, and 16 are reversed.

A new ground of rejection is entered under 37 CFR § 1.196(b) as to claim 8.

In addition to affirming the examiner's rejection of one or more claims, this decision contains a new ground of rejection pursuant to 37 CFR § 1.196(b) (amended effective Dec. 1, 1997, by final rule notice, 62 Fed. Reg. 53,131, 53,197 (Oct. 10, 1997), 1203 Off. Gaz. Pat. & Trademark Office 63, 122 (Oct. 21, 1997)). 37 CFR § 1.196(b) provides, "A new ground of rejection shall not be considered final for purposes of judicial review."

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Regarding any affirmed rejection, 37 CFR § 1.197(b) provides:

(b) Appellant may file a single request for rehearing within two months from the date of the original decision

37 CFR § 1.196(b) also provides that the appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of proceedings (37 CFR § 1.197(c)) as to the rejected claims:

(1) Submit an appropriate amendment of the claims so rejected or a showing of facts relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the application will be remanded to the examiner. . . .

(2) Request that the application be reheard under § 1.197(b) by the Board of Patent Appeals and Interferences upon the same record. . . .

Should the appellant elect to prosecute further before the Primary Examiner pursuant to 37 CFR § 1.196(b)(1), in order to preserve the right to seek review under 35 U.S.C. §§ 141 or 145 with respect to the affirmed rejection, the effective date of the affirmance is deferred until conclusion of the prosecution before the examiner unless, as a mere incident to the limited prosecution, the affirmed rejection is overcome.

If the appellant elects prosecution before the examiner and this does not result in allowance of the application, abandonment

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or a second appeal, this case should be returned to the Board of Patent Appeals and Interferences for final action on the affirmed rejection, including any timely request for rehearing thereof.

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No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR
§ 1.136(a).

AFFIRMED-IN-PART - § 1.196(b)

KENNETH W. HAIRSTON)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
LEE E. BARRETT)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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